

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALLEXIS CARGILE,
NELEAYAH KNOTT, RASEAN CARGILE, and
RAKELL CARGILE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KRYSTAL GAYLE CARGILE,

Respondent-Appellant,

and

RICHARD DEVIN KNOTT,

Respondent.

UNPUBLISHED

July 10, 2008

No. 281781

Jackson Circuit Court

Family Division

LC No. 05-002270-NA

Before: Sawyer, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Respondent-appellant appeals by right the family court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

The family court did not clearly err by finding that the statutory grounds for termination had been established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The primary conditions leading to adjudication with respect to the three oldest children were respondent-appellant's deficient parenting skills and judgment, reflected in her decision to leave the young children unattended for 45 minutes, and her unavailability to care for the children due to incarceration. Respondent-appellant was incarcerated for the majority of the first year of these proceedings because of a probation violation and continued retail fraud. The conditions leading to adjudication with respect to Rakell, who was born during the proceedings, also centered on respondent-appellant's inability to parent the children. The petition for Rakell's removal cited respondent-appellant's neglect of the other children as well as respondent-appellant's imminent sentencing for a new retail fraud conviction.

Although respondent-appellant had remained out of the criminal court for approximately one year at the time of termination, the family court did not clearly err by finding that she continued to lack the ability to appropriately parent and care for the children. As petitioner and the guardian ad litem for the children emphasize, this case began more than 2½ years before termination was finalized. Yet, at the time of termination, respondent-appellant did not have housing, had been recently living at a shelter, and was staying with a friend. According to the testimony of the foster care worker, she did not benefit from parenting classes. Respondent-appellant had not demonstrated consistency in any part of her behavior throughout this case. She was twice terminated from therapy for nonattendance. Even with her final therapist, who felt that respondent-appellant had made progress, respondent-appellant attended only approximately half of the sessions available and left Jackson to relocate to Detroit before therapy was complete, apparently sabotaging her own efforts. It is also notable that respondent-appellant left a shelter in March 2007 because she was unwilling to abide by the rules—in particular a rule requiring residents to save a substantial portion of their pay for the purpose of obtaining housing. Respondent-appellant then lived with her father. However, the children could never have been placed in the home of respondent-appellant's father because the father was on the central registry. Lastly, respondent-appellant did not demonstrate consistency in visiting the children.

The record amply supported the family court's conclusion that respondent-appellant continued to lack the ability to care and provide for the children. Especially considering the duration of this case, the court did not clearly err by finding that there was no reasonable likelihood that the conditions leading to adjudication would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i). While respondent-appellant asserts that she is poised for success in the future, her conduct throughout these proceedings unfortunately provides a discouraging prospect. During the pendency of this case, respondent-appellant squandered good housing opportunities by engaging in conduct that caused her reincarceration, notably losing her MISHDA certification for this reason, and refused to comply with shelter requirements designed to assist her in obtaining housing. Respondent-appellant had failed to benefit from the services offered and still lacked housing at the time of termination. The family court did not clearly err by concluding that § 19b(3)(c)(i) had been proven by clear and convincing evidence with respect to all four children.

Nor did the family court clearly err by finding that MCL 712A.19b(3)(g) had been established by clear and convincing evidence with respect to all four children. Respondent-appellant failed to provide proper care and custody for the three older children by leaving them unsupervised and through her inability to care for them due to incarceration. At the time of Rakell's birth, respondent-appellant was again unable to care for the newborn because she was facing imminent sentencing for another instance of retail fraud. Respondent-appellant's failure to comply with her parent-agency agreement—by failing to consistently engage in therapy, to consistently visit the children, or to benefit from parenting classes—is also evidence of her failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). The same evidence that established that there was no reasonable likelihood that the conditions leading to adjudication would be rectified within a reasonable time equally demonstrates that there was no reasonable likelihood that respondent-appellant would be able to provide proper care and custody for the children within a reasonable time considering the children's ages.

Finally, the trial court did not clearly err by finding that termination of respondent-appellant's parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). The foster care worker testified that there did not appear to be a significant bond between respondent-appellant and the three youngest children. All of the children had been out of respondent-appellant's care for 2½ years at the time of termination, and Rakell had never been in the care of respondent-appellant. Given that respondent-appellant is still unable to bear the responsibilities of caring for these young children, that respondent-appellant continues to lack suitable housing, and that respondent-appellant has failed to demonstrate any degree of consistency or stability throughout these proceedings, we perceive no clear error in the family court's conclusion that termination was not clearly contrary to the children's best interests.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra